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Employees' Association

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA

16 COUNTY OF SANTA CLARA

17
18 SAN JOSE POLICE OFFICERS'
19 ASSOCIATION,

20 Plaintiff,

21 v.

22 CITY OF SAN JOSE, BOARD OF
23 ADMINISTRATION FOR POLICE
24 AND FIRE DEPARTMENT
RETIREMENT PLAN OF CITY OF
SAN JOSE, and DOES 1-10, inclusive,

25 Defendants.

26 AND RELATED CROSS-COMPLAINT
27 AND CONSOLIDATED ACTIONS
28

No. 1-12-CV-225926

(and Consolidated Actions

1-12-CV-225928, 1-12-CV-226570,

1-12-CV-226574, 1-12-CV-227864,

and 1-12-CV-233660)

**PLAINTIFFS SAN JOSE POLICE OFFICERS'
ASSOCIATION AND SAN JOSE RETIRED
EMPLOYEES' ASSOCIATION'S MOTION IN
LIMINE NO. 1 TO EXCLUDE UNRELIABLE
ALLEGED "LEGISLATIVE HISTORY"**

Complaint Filed: June 16, 2012

Trial Date: July 22, 2013

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I.

INTRODUCTION

Plaintiffs San Jose Police Officers' Association and San Jose Retired Employees' Association move this Court for an order *in limine* to exclude the following trial exhibits offered by Defendant City of San Jose (the City): Trial Exhibits 5207, 5210, 5212 and 5213. (Attached hereto.) The City asserts these exhibits are cognizable legislative history of the amendments to the 1965 San Jose Charter:

- Exhibit 5207 is a letter dated September 1, 1964 from the Municipal Employees Federation to the chairman of the charter revision committee.
- Exhibit 5210 is a "memorandum" dated October 13, 1964 "presented by: District Chief Leonard Marks" without any indication as to whom it was addressed.
- Exhibit 5212 is a letter dated October 27, 1964 from the Municipal Employees Federation to the chairman of the charter committee.
- Exhibit 5213 is a letter dated December 4, 1964 from the Municipal Employees Federation to the Charter Revision Committee.

Our courts have expressly held such documents are not proper legislative history because they lack sufficient badges of reliability that they actually reflect legislative intent. For this reason, the City should be precluded from offering the documents into evidence, or any testimony about them, at trial.

II.

MEMORANDUM OF POINTS AND AUTHORITIES

The appellate court in *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 30-37 exhaustively detailed those documents constituting proper legislative history and those documents that do not. Specifically, it held that the following are *not* proper sources of legislative history: (1) letters from a bill's author to the governor that do not state whether the author's views were made known to

1 the legislature as a whole; (2) letters from consultants to the governor regarding the bill;
2 (3) letters from the state bar to an individual legislator; and (4) letters to the governor
3 urging the signing of a bill. (*Id.* at p. 37.) *Kaufman* explained such documents are *not*
4 proper legislative history because they do not reflect **legislative** intent.

5 None of exhibits listed above (City Exs. 5207, 5210, 5212, -5213) satisfy the
6 *Kaufman* standard because there is no indication these exhibits were considered by the
7 entirety of the committee members or those who voted on the charter. As *Kaufman*
8 explained, such “random documents are not reliable indicia of legislative intent.” (133
9 Cal.App.4th at p. 39.) The City thus cannot show these letters are cognizable legislative
10 history. Where a letter fails to indicate it was presented to the legislators who voted on
11 the bill it cannot be considered part of legislative history. On that basis, *Heavenly Valley*
12 *Ski Resort v. El Dorado County Bd. of Equalization* (2000) 84 Cal.App.4th 1323, 1341
13 rejected two proffered letters: one, a letter to the Governor from the author of a bill
14 amending taxation statutes regarding administrative review of business property audits;
15 and two, a letter to the Governor from the consultant of an apparent sponsor of the bill.
16 The Court refused these documents because there was no indication either letter was
17 presented to the legislators who voted on the bill.

18 *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062 rejected as
19 proper legislative history the statements of an individual legislator in construing a statute,
20 (including the bill’s author), because a court’s task is to ascertain the intent of the
21 Legislature *as a whole*. Similarly, the court in *California Teachers Association v. San*
22 *Diego Community College District* (1981) 28 Cal.3d 692, 700–701, found that letters to
23 the Governor, even from the bill’s author, were not inherently reflective of the
24 Legislature’s intent.


25 Because the City cannot satisfy the requirements of *Kaufman* and the other
26 cases cited above, this Court precluded the City from offering these exhibits into
27 evidence, or any testimony about them, at trial.
28

1 **CONCLUSION**

2 For the reasons stated herein, SJPOA and SJREA respectfully requests that this
3 Court grant its motion *in limine* to exclude the City's Trial Exhibits 5207, 5210, 5212 and
4 5213.

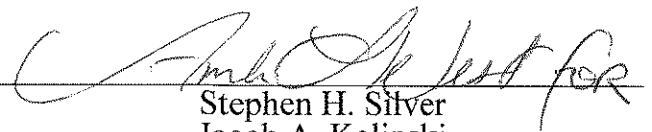
5
6 Dated: June 27, 2013

7 CARROLL, BURDICK & McDONOUGH LLP

8
9 By 
10 Gregg McLean Adam
11 Gonzalo C. Martinez
12 Amber L. West
13 Attorneys for Plaintiff and Cross-Defendant
14 San Jose Police Officers' Association

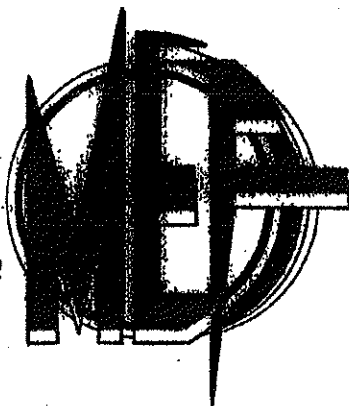
15
16 Dated: June 27, 2013

17 SILVER HADDEN SILVER WEXLER &
18 LEVINE

19
20 By 
21 Stephen H. Silver
22 Jacob A. Kalinski
23 Attorneys for Plaintiff
24 San Jose Retired Employees' Association
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CITY OF SAN JOSE

TRIAL EXHIBIT 5207



Municipal Employees Federation
of the City of San Jose, a California Corporation
776 Miller St. San Jose 10, California

Telephone 286 5250

September 1, 1964

Chairman
Charter Revision Committee
City of San Jose, California

Dear Sir,

Since your Committee is discussing today, that portion of the previously proposed City Charter revision pertaining to Retirement, we submit for your consideration the following suggested wording for Section 1601:

Sec. 1601. The City Council in its discretion may at any time, or from time to time, by ordinance amend or otherwise change the retirement or pension plan or plans including but not limited to, previously established plans by parts 1, 2, 3, 3a and 4 of Chapter 9 of Article II of the San Jose Municipal Code provided that they shall not decrease the level of benefits now existing in all retirement plans.

By the foregoing, it is our intent to obtain the same existing retirement benefits for future as well as present employees.

Very truly yours,

MUNICIPAL EMPLOYEES FEDERATION
of SAN JOSE


EDWARD A. GROSSHEIDER
Manager

EAG:bls

MEMBER



SJRJN000497

CITY OF SAN JOSE

TRIAL EXHIBIT 5210

PRESENTED BY: DISTRICT CHIEF LEONARD MARKS
San Jose Fire Department
October 13, 1964

add to: Art. XVI Retirement

FIRE AND POLICE RETIREMENT PLAN

1. Council may exclude same persons as designated in 78 b (3) (non emergency persons.)
2. Must contain following provisions:
 - A. Members with 20 years service, and age 55 may retire, provided that the council may lower the retirement age.
 - B. Members shall be retired at age 65, provided that the council may lower the maximum age.
 - C. Members with 20 years service and disabled, may retire regardless of cause of disability.
 - D. Members retired under A, B, or C shall be entitled to 50% of average salary for three highest years; or $\frac{1}{3}$ of current salary, or such increased benefit as may be provided by the council.
 - E. Proportionate shares of contribution for current service shall at all times be 8 parts for the City and 3 parts for the member, and the plan is to be actuarially sound, with an actuarial report at least every five years.
 - F. Anything to the contrary notwithstanding, the council may adopt, establish or provide new or different plans providing benefits in excess and additional to those herein provided.

CITY OF SAN JOSE

TRIAL EXHIBIT 5212



Municipal Employees Federation
of the City of San Jose, a California Corporation
776 Miller St. San Jose 10, California

Telephone 286 5250

October 27, 1964

Mr. George Starbird, Chairman
Charter Committee
City of San Jose, California

Dear Mr. Starbird,

The Municipal Employees Federation offers the following recommendations for inclusion in your committee's thinking, discussions and hearings before the final draft of the new proposed Charter is completed:

CIVIL SERVICE COMMISSION

1. We feel that the provisions of the revised Charter (1962) regarding nominations by employees of at least two Commissioners should be placed in the new Charter. Each could be appointed by Council from a list of three, nominated by the employees. This practice is consistent with that prevailing in other jurisdictions; for example, the Personnel Board of the County of Santa Clara.
2. Since about 50% of public employees are female, the stipulation of "not more than four Commissioners shall be of the same sex" implies that only one shall be a woman. This, in our opinion, is discriminating.
3. The mandate of an attorney being one of the five Commissioners has no justification. For, under such a provision, this person normally is elected the Chairman, not because of his presumed extraordinary capabilities, but rather in deference to his professional status.
4. Commissioners should be limited to two terms.
5. We feel the office of Secretary to the Commission should be retitled to "clerk", and that the Personnel Director should not serve in this capacity since he is administrative advisor to the Commission and, in our

MEMBER



SJRJN000505

Mr. George Starbird, October 27, 1964, page 2

opinion, cannot function properly for both management and employees.

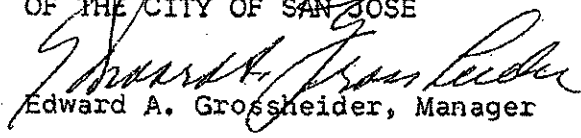
RETIREMENT

In our presentation before you regarding Section 1601 entitled "Authority to Amend Retirement System", we again offer the following:

Sec. 1601. The City Council in its discretion may at any time, or from time to time, by ordinance amend or otherwise change the retirement or pension plan or plans including, but not limited to, previously established plans by parts 1, 2, 3, 3a and 4 of Chapter 9 of Article II of the San Jose Municipal Code provided that they shall not decrease any benefits now existing in such retirement or pension plan or plans.

Very truly yours,

MUNICIPAL EMPLOYEES FEDERATION
OF THE CITY OF SAN JOSE


Edward A. Grossheider, Manager

EAG:bls

CITY OF SAN JOSE
TRIAL EXHIBIT 5213



Municipal Employees Federation
of the City of San Jose, a California Corporation
776 Miller St. San Jose 10, California

Telephone 286 5250

December 4, 1964

To: Charter Revision Committee

Subject: Inclusions of basic retirement benefits
now in existence for the Federated City
Employee Retirement System

We understand that a specific proposal has been presented to your body for Police and Fire Retirement basic benefits.

After careful study of the matter, we would like to submit a similar proposal as it pertains to the Federated Retirement System.

In order to facilitate the inclusions of both Retirement Systems in the proposed Charter we suggest the following provisions:

- A. Members may retire at age 55 with 25 years of service.
- B. Mandatory retirement shall be at age 70.
- C. Members with 10 years of service may be eligible for disability retirement at 90% of service retirement benefit but not less than $\frac{1}{2}$ pay.
- D. Members shall receive 2% of the highest 3 year average annual salary for each year of service. (This will equal 50% or $\frac{1}{2}$ pay at 25 years of service.)
- E. Ratio for current service contributions shall be 8 parts for the City and 3 parts for members.
- F. The City Council may adopt any amended or new plan or plans, providing benefits in excess and additional to those herein provided.

Submitted by

Retirement Committee of the
Municipal Employees Federation

MEMBER



ES:bls

SJRJN000507

1 *San Jose POA v. City of San Jose, et al.,*
2 Santa Clara County Superior Court, No. 1-12-CV-225926
(and Consolidated Actions 1-12-CV-225928, 1-12-CV-226570, 1-12-CV-226574,
3 1-12-CV-227864, and No. 1-12-CV-233660)

4 **PROOF OF ELECTRONIC SERVICE**

5 I declare that I am employed in the County of San Francisco, California. I am
6 over the age of eighteen years and not a party to the within cause; my business address is
44 Montgomery Street, Suite 400, San Francisco, CA 94104. On June 27, 2013, I served
7 the enclosed:

8 **PLAINTIFFS SAN JOSE POLICE OFFICERS' ASSOCIATION AND SAN JOSE RETIRED**
9 **EMPLOYEES' ASSOCIATION'S MOTION *IN LIMINE* NO. 1 TO EXCLUDE UNRELIABLE**
10 **ALLEGED "LEGISLATIVE HISTORY"**

11 by electronic service. Based upon a court order or an agreement of the parties to accept
12 service by electronic transmission, I caused the documents to be sent to the persons at the
electronic notification addresses listed below. I did not receive, within a reasonable time
after the transmission, any electronic message or other indication that the transmission
was unsuccessful.

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Counsel for Defendants
City of San Jose (No. 1-12-CV-225926)

City of San Jose and Debra Figone
(Nos. 1-12-CV-225928;
1-12-CV-226570; 1-12-CV-226574;
1-12-CV-227864)

| | |
|---|---|
| <p>1 Harvey L. Leiderman, Esq. 2 Reed Smith LLP 3 101 Second Street, Suite 1800 4 San Francisco, CA 94105 5 Phone: (415) 659-5914 6 Fax: (415) 391-8269 7 Email: hleiderman@reedsmith.com</p> | <p><i>Counsel for Defendant Board of Administration for Police and Fire Department Retirement Plan of City of San Jose (No. 1-12-CV-225926)</i></p> <p><i>Necessary Party in Interest The Board of Administration for the 1961 San Jose Police and Fire Department Retirement Plan (No. 1-12-CV-225928)</i></p> <p><i>Necessary Party in Interest The Board of Administration for the 1975 Federated City Employees' Retirement Plan (Nos. 1-12-CV-226570; 1-12-CV-226574)</i></p> <p><i>Necessary Party in Interest The Board of Administration for the Federated City Employees Retirement Plan (No. 1-12-CV-227864)</i></p> |
| <p>12 John McBride, Esq. 13 Christopher E. Platten, Esq. 14 Mark S. Renner, Esq. 15 Wylie, McBride, Platten & Renner 16 2125 Canoas Garden Ave., Suite 120 17 San Jose, CA 95125 18 Phone: (408) 979-2920 19 Fax: (408) 979-2934 20 Email: jmcbride@wmpirlaw.com 21 cplatten@wmpirlaw.com 22 mrenner@wmpirlaw.com</p> | <p><i>Counsel for Plaintiffs Robert Sapien, Mary McCarthy, Thanh Ho, Randy Sekany and Ken Heredia (No. 1-12-CV-225928)</i></p> <p><i>Teresa Harris, Jon Reger, and Moses Serrano (No. 1-12-CV-226570)</i></p> <p><i>John Mukhar, Dale Dapp, James Atkins, William Buffington and Kirk Pennington (No. 1-12-CV-226574)</i></p> |
| <p>18 Teague P. Paterson, Esq. 19 Vishtasp M. Soroushian, Esq. 20 Beeson, Taylor & Bodine APC 21 Ross House, 2nd Floor 22 483 Ninth Street 23 Oakland, CA 94607-4051 24 Phone: (510) 625-9700 25 Fax: (510) 625-8275 26 Email: TPaterson@beesontayer.com 27 VSoroushian@beesontayer.com</p> | <p><i>Counsel for Plaintiff AFSCME Local 101 (No. 1-12-CV-227864)</i></p> |

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*Attorneys for Plaintiff San Jose Retired
Employees Association, Howard E.
Fleming, Donald S. Macrae, Frances J.
Olson, Gary J. Richert and Rosalinda
Navarro (No. 1-12-CV-233660)*

12 I declare under penalty of perjury that the foregoing is true and correct, and
13 that this declaration was executed on June 27, 2013, at San Francisco, California.

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Joan Gonsalves